

Fences, Boundaries, and the Line Fences Act

Reprinted with permission from the *INSIDE Stratford/Perth*, July 28, 2000 issue.

EDITOR'S NOTE: This article was forwarded to me by past registrar Peter Moreton as a reasonably good summary of issues under the Line Fences Act. The AOLS staff receive calls about this Act on a regular basis and I have noted that there is often misunderstanding amongst land owners and municipal staff about the relationship (or lack thereof) between the Act and the determination of boundaries. This may prove useful next time you receive a similar call.

Disputes between adjoining landowners over the construction, repair or maintenance of line fences may be settled through application of the dispute resolution process in the Line Fences Act.

Line fences mark the boundary between adjoining properties. Section 3 of the Act gives landowners the right to construct and maintain line fences. However, Section 3 does not require that landowners build fences to mark the boundaries of their property.

When adjoining landowners cannot agree on the construction, repair or maintenance of their line fence, either begins the settlement process by contacting their municipal clerk. Before doing this, they should;

- make every effort to reach an agreement with their neighbour,
- try to resolve the matter informally with the clerk,
- be sure the Act applies to both properties, and most important,
- be sure the location of the boundary is not the problem. (The Line Fences Act cannot be used to settle a dispute over the location of a boundary)

If adjoining landowners follow these steps but cannot reach an agreement, and one still wants a fence, they call the fence-viewers. Each municipality appoints the necessary number. Three meet at the appropriate time and place. When three are not present, the viewing is postponed. The clerk informs the parties in writing of the date and time of the viewing. It is more than 1 week but less than 30 days after the notice was mailed. Viewing scheduled between November 1 and March 31 may be postponed due to the possibility of bad weather. The clerk briefs the fence-viewers on the points in dispute beforehand. Once on site, they study the location for the proposed fence or examine the condition of the existing fence. The fence-viewers

may hear evidence under oath from the parties.

Section 3 does not require that landowners build fences to mark the boundaries of their property.

Section 7(2) lists the matters the viewers must consider. They are;

- the suitability of the fence to the needs of each party,
- the nature of the terrain where the fence will be located,
- the benefit to both from having the boundary marked by a fence,
- the nature of fences in the area, and
- any other factors that they believe relevant.

The Line Fences Act does not mention livestock! Other statutes and common law impose the duty on farmers with livestock to ensure their animals do not stray and damage neighbouring property.

There is nothing in the Line Fences Act assigning a specific portion of a line fence to each party. That is; there is no right hand rule!

The Line Fences Act cannot be used to settle a dispute over the location of a boundary.

For rented property, the tenant is responsible for informing the landowner of the attendance of the fence-viewers. If he does not, then he is liable for any costs or damages awarded against the landowner by the fence-viewers.

The fence-viewers' award must be signed by two of the three fence-viewers present. It notes the location of the line fence; usually the boundary. However, if the terrain makes this difficult because of

a pond or swamp, it may be placed all or partly on one property. If so, the location of the fence does not affect title to the land. The award describes the style of the fence to be built, including the materials and the completion date. If there is a municipal fence bylaw under the Municipal Act, the award must conform to it. Fence bylaws are most common in urban municipalities but some rural municipalities have them too.

Finally, the award shows who pays for the work ordered. It may order each party build or repair a designated part of the fence or one party to do all the work and the other pay part of the cost. However, if the fence-viewers feel an equal share of cost or labour is unfair, they can divide the cost or work as the see fit!

If the fence-viewers' award is registered on title in the registry office, it is binding on future owners of the properties. An agreement between landowners on cost sharing for their line fence reached without the fence-viewers can also be registered on title.

A landowner unhappy with the fence-viewers' award may appeal it to the referee. He notifies his neighbour by registered mail or hand delivery within 15 days of receiving his copy of the fence-viewers' award. A copy of this notice and the correct fee (\$50.00) is filed with the clerk. The clerk informs the referee who sets the time and place for the hearing. Appeals are held locally. The clerk then informs the parties in writing of the time and place for the appeal hearing. At the appeal hearing, the referee examines the parties and their witnesses under oath. The referee may inspect the actual location of the line fence in dispute. Following the appeal hearing, the referee will either set aside, alter, affirm or correct any error in the award of the fence-viewers. He may order payment of the costs of the appeal, excluding referee's fees, by either or both parties. The decision of the referee is final.

